IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6377 OF 1998

Ms.Tejal Vijaykumar Vaghela .. Petitioner

Versus

State of Maharashtra & Ors. .. Respondents

Mr.R.K.Mendadkar for petitioner

Mr.C.R.Sonawane, A.G.P. for Respondents.

CORAM : A.P.SHAH AND

S.C.DHARMADHIKARI, JJ.

DATE : 18TH OCTOBER 2004.

P.C.

. Heard Advocates.

2. Petitioner claims to belong to Mahayavanshi caste which is recognised as Scheduled Caste under the Presidential Order. Petitioner after passing her H.S.C. examination

applied to respondent No.2 Scrutiny Committee for Caste Validity Certificate. Caste certificate of petitioner was invalidated by respondent No.2, Scrutiny Committee solely on the ground that father of petitioner was born in villege Dohad, District Panchmahal in the State of Gujarat and came to State of of Maharashtra in the year 1970 and, therefore, petitioner is not entitled for privileges and concession in the State of Maharashtra.

3. Petitioner challenged this order before this Court in W.P. 2749 of 1998 which came to be disposed of by the Division Bench vide order 19th June 1998. The Division Bench relied upon the decision of the Supreme Court in the case of Action Committee on Issue of Caste Certificate to Scheduled Caste and Scheduled Tribes in the State of Maharashtra and Anr. Vs. Union of India and Anr. reported in (1994) 5 S.C.C. 244 and held that the Scrutiny Committee was not right in rejecting the caste certificate of petitioner on the ground that petitioner's father was migrant in in Maharashtra and as on the date of Presidential Order dated 10th August 1950, father

of petitioner was permanent resident of State of Bombay. The Division Bench observed:-

> "The order impugned in the petition cannot be sustained in law in view of the judgement of the Apex Court in the case of Action Committee on issue of Caste Certificates to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Anr. Vs. Union of India and Anr. reported in 1994 (5) S.C.C. 244. By the said judgement, the apex Court has inter alia held that unless the person concerned is shown to be a permanent resident of the State of Maharashtra on 10th August 1950, the petitioner is not entitled for benefits and privileges accorded by the State of Maharashtra.
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> It is therefore, submitted that the permanent place of residence of person on the date of the notification of the Presidential order scheduling her caste

> in relation to that locality in a particular locality assumes significance. Admittedly, the father of the petitioner was born in village Dahod in the Panchmahal district on 24/2/1950 but the committee has claimed that the said District fell in the Union Territories of Daman which is factually incorrect. According to the petitioner, the said village Dahod in Panchmahal District fall in the teritories of the State of Bombay which was in existence on 10/8/1950. The State of Maharashtra was founded for the first time on 1st May 1960 by virtue of Bombay Reorganisation Act, and the Panchmahal District was included in the State of Gujarat from 1st May 1960. Thus on the date of notification of the Presidential Order on 10th August, 1950, the father of the petitioner was the permanent resident of the State of Bombay."

In the light of the above finding the Division Bench directed respondent No.2 Committee to

re-consider the case of petitioner for grant of caste validity certificate as belonging to Mahayavanshi without insisting upon petitioner producing proof of residence in Maharashtra prior to 1950.

4. It appears that even after the matter was remanded back to the Scrutiny Committee, the scrutiny committee took the same view holding that father of petitioner is liable to be treated as migrant in State of Maharashtra. The Scrutiny Committee violated the specific direction of the Division Bench not to insist upon petitioner to produce proof of residence in Maharashtra prior to 1950. In the circumstances we are unable to sustain the order of scrutiny committee. Petitioner has brought on record that petitioner's real brother Mayurkumar Vaghela has been given caste validity certificate by very same Scrutiny Committee which rejected petitioner's claim. The Scrutiny Committee is directed to issue caste validity certificate to petitioner within a period of two months from today. Rule is accordingly made absolute with no orders as to costs.

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